THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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DATED: 03-10-2005

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WRIT PETITION No.19161 of 1996

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Between:

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M.Ch.Punnaiah Chowdary . . .Petitioner

And

The Vice Chairman and Managing Director,

Sports Authority of AP., Hyderabad, and another . . .Respondents

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No.19161 of 1996

O R D E R:

Questioning the action of the first respondent in not releasing his pension as illegal and arbitrary and for a consequential direction to release his pension forthwith, WP.No.19161 of 1996 is filed by the petitioner herein.

The facts, to the extent necessary for this writ petition, are that:

The petitioner was initially recruited with the Sports Authority of Andhra Pradesh, Hyderabad, as Shuttle Badminton Coach from 12-05-1978. He was, subsequently,

promoted as a Regional Deputy Director and thereafter, as a Deputy Director. The petitioner opted for voluntary retirement from service on
10-03-1994, which was accepted, vide proceedings dated
24-03-1994, and the petitioner was permitted to retire from service with effect from 31-03-1994. The petitioner was, however, informed that acceptance of his request for voluntary retirement, with immediate effect, was subject to the outcome of the disciplinary proceedings, pending against him, including recovery of misappropriated amounts of the Sports Authority of Andhra Pradesh, Hyderabad, towards advances drawn by the petitioner from the State Level Women's Sports Festival at Eluru, during December, 1993, misrepresentation of facts with regard to employees working on consolidated pay/daily wages within Guntur Region for the purpose of regularization, and claiming of wrongful TA Bills etc. The proceedings dated 24-03-1994 refers to the Andhra Pradesh Revised Pension Rules, 1980.

An enquiry officer was appointed and he issued charge memo dated 16-05-1994, to which, the petitioner submitted his reply on 30-06-1994. A show cause notice was issued by the first respondent on 20-10-1994 and the petitioner was asked to show cause as to why punishment of 25% pension cut apart from recovery of Rs.1,13,058/- from pensionary benefits should not be imposed on him for the charges held proved. In the show cause notice, it is stated that all charges, except 2, 5 and 6, framed against the petitioner were held proved. The petitioner submitted his explanation to the said show cause notice on
06-11-1994 and was informed on 29-11-1994 that he would be given an opportunity of personal hearing which the petitioner availed on 05-12-1994 and, by proceedings dated 04-10-1996, the first respondent held that charges 1, 3, 4, 8 and 9 were proved, charge No.7 was partly proved and since the nature of charge was grave, that too of pecuniary loss of Rs.1,13,058/- caused due to misappropriation of funds, the said amount was ordered to be recovered from the pensionary benefits of the petitioner. Since the petitioner had retired from service and taking a lenient view, the proposed 25% cut from pension was dropped.

Mr. Tuheen Kumar, learned counsel appearing on behalf of Sri C.Srinivasa Baba, learned counsel for the petitioner, would submit that no enquiry was held and the first respondent had taken action under Rule 9 read with Rule 22 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, (hereinafter referred to as "CCA Rules"), which prescribes the procedure for

imposing minor penalties. Learned counsel would submit that while recovery from pay, of the whole or part of any pecuniary loss caused by the employee, is one of the enumerated minor penalties, the said procedure, followed by the first respondent, would apply only to employees, who were still in the services of the first respondent. Learned counsel would submit that cases of employees, who had retired from service, are governed by Rule 9(1) read with 9(2)(b)(iii) of the Andhra Pradesh Revised Pension Rules, 1980. According to the learned counsel, while Rule 9(1) of the Revised Pension Rules, 1980, enables the first respondent to recover any pecuniary loss caused from the pension of an employee, Rule 9(2)(b)(iii), however, prescribes that such a punishment under Rule 9(1) of the Pension Rules can only be imposed in accordance with the procedure applicable to departmental proceedings, in which, an order of dismissal from service could be made in relation to the employee, during his service. Learned counsel would submit that the procedure applicable to departmental proceedings, in which, an order of dismissal from service could be passed, is the one prescribed in Rule 20 of the CCA Rules which is the procedure applicable for imposition of major penalties. Learned counsel would submit that this procedure would require an enquiry to be held, wherein witnesses are to be examined in the presence of the delinquent employee, the delinquent employee has to be given an opportunity to cross-examine such witnesses, to adduce evidence in his defence, and to make his submissions on the evidence adduced in the enquiry. Learned counsel would submit that this procedure has been given a go-bye and minor penalty proceedings, as prescribed in Rule 22 of the CCA Rules, which requires merely a charge sheet to be issued, an explanation to be called for and thereafter the punishment imposed, has been followed.

Sri K.Janardhan Rao, learned Standing Counsel appearing for the first respondent would refer to Rule 9 of the CCA Rules, which prescribes minor penalties and would submit that among the minor penalties prescribed, is recovery from the pay of an employee. Learned Standing Counsel would submit that the punishment imposed on the petitioner is recovery from his pension which, in effect, is a minor penalty as specified in Rule 9 of the CCA Rules and therefore, the first respondent was justified in following the procedure prescribed in Rule 22 of the CCA Rules. Learned Standing Counsel would refer to sub-Rule 7 of Rule 9 and submit that even if an employee had retired from service it is always open for the first respondent to recoup the pecuniary loss and deduct the said amount from the retirement gratuity and it is only the net amount, which is payable to the retired employee.

Before examining the rival contentions, it is necessary to refer to Rule 22 of the CCA Rules and to Rule 9 of the A.P. Revised Pension Rules, 1980. While Rule 9, of the CCA Rules, provides for recovery from pay as a minor penalty, for which, the procedure prescribed in Rule 22 of the CCA Rules is required to be followed, Rule 9 of the A.P. Revised Pension Rules, 1980, makes a departure therefrom. CCA Rules would apply only when an employee is in the active service of the first respondent and after his retirement, it is Rule 9 of the Pension Rules, which would apply. The first respondent, in his proceedings dated 24-03-1994, has specifically referred to Rule 9 and Rule 9(2)(b) of the Andhra Pradesh Revised Pension Rules, 1980. The departure, made under Rule 9 of the Andhra Pradesh Revised Pension Rules, 1980, is that even for recovery of pecuniary loss, caused by an employee, from his pension, the procedure applicable to the departmental proceedings, in which, an order of dismissal from service could be made in relation to the employee during his service, is required to be followed. This procedure is the one applicable for major penalty proceedings under Rule 20 of the CCA Rules. Admittedly, this procedure has not been followed. The impugned order is therefore, quashed.

Needless to state that the respondents are not precluded from initiating major penalty proceedings against the petitioner in terms of Rule 20 of the CCA Rules, by reason of this order.

The Writ Petition is accordingly allowed. There shall however be no order as to costs.

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(RAMESH RANGANATHAN, J)

3rd October, 2005.

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